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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. RANDALL WILLIAMS, Defendant and Appellant.	B284316 (Los Angeles County Super. Ct. No. MA069874)

APPEAL from a judgment of the Superior Court of Los Angeles County, Shannon Knight, Judge. Affirmed and remanded with directions.

Suzanne G. Wrubel, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Stephanie A. Miyoshi and William N. Frank, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

After relatives locked him out of the house he shared with them, Randall Williams repeatedly threatened to burn it down, before throwing a Molotov cocktail against the house, setting a window on fire.

A jury convicted Williams of four counts of making a criminal threat, one count of arson, one count of using a destructive or explosive device, and eleven counts of assault with a deadly weapon.

On appeal from the judgment, Williams contends (1) the trial court improperly denied his repeated requests to substitute appointed counsel (*People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*), (2) the evidence was insufficient to support three of his four convictions for making a criminal threat and (3) the court erroneously failed to give, sua sponte, a unanimity instruction on all criminal threat counts. We affirm the convictions and remand for the court to consider whether to strike the prior serious felony enhancements under Penal Code section 667, subdivision (a).[1]

FACTUAL AND PROCEDURAL BACKGROUND

I. The Charges and Special Allegations

Williams was charged in an amended information with 11 counts of willful, deliberate and premeditated attempted murder (§§ 664, 187, subd. (a), counts 1-11), four counts of making a criminal threat (§ 422, subd. (a), counts 12 & 15-17), arson of an inhabited property (§ 451, subd. (b), count 13), using a destructive or explosive device (§ 18740, count 14), and 11 counts of assault with a deadly weapon (a Molotov cocktail) (§ 245, subd.

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[1] Statutory references are to the Penal Code, unless otherwise indicated.

(a)(1), counts 18-28). Concerning counts 1 through 17, the information specially alleged Williams had suffered two prior serious or violent felony convictions within the meaning of the three strikes law (§§ 667, subds. (b)-(j), 1170.12). Concerning counts 1 through 13 and 18 through 28, the information specially alleged Williams had suffered two prior serious felony convictions pursuant to section 667, subdivision (a)(1). Concerning all counts, it alleged Williams had previously served five separate prison terms for felonies (§ 667.5, subd. (b)).

II. Summary of Pertinent Trial Evidence

A. The prosecution evidence

Williams, his girlfriend Althea Richardson, and her children resided with Williams's relatives in the city of Lancaster. A total of eleven people, seven adults and four children, lived in the house. They were all at home on the night of June 3, 2016, and Williams's sister Rita Simon was visiting.[2] Williams, who had been drinking, began arguing with Edith Collins, his former sister-in-law. Later, between 10:00 and 11:00 p.m., after another argument nearly erupted into a fistfight between Williams and his nephew Casey Cameros and niece Cassie Rodriguez, Williams was told to leave. After Williams drove away, his relatives left open the wooden front door, which led into the living room of the house. They closed and locked the outer metal screen security door.

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[2] Because some of Williams's relative have similar names and more than one of them has the same surname, we refer to the relatives by their first name when necessary to avoid confusion.

That night, Williams returned to the house twice and demanded to be allowed inside, but his relatives would not relent. The first time, Williams brought two young women. He wanted one of them to fight his niece Cassie. Williams yelled through the security door for Cassie to come outside. When Cassie did not comply, Williams and the young women left. The second time, Williams stood outside the door and yelled to his sister, Classie Cameros, to be allowed inside. When Classie refused, Williams shouted through the door, "If I can't stay here tonight, won't nobody else will," and "I'll burn this mother fucker down." He appeared intoxicated and was banging on the security door. Classie was in the living room, along with Casey, Cassie, Edith Collins, Althea Richardson and Rita Simon. Williams also demanded that Richardson and Simon leave the house or he would "blow it up." However, Richardson and Simon remained inside. After his attempts to gain entry were rebuffed, Williams drove away.

At around midnight, Williams telephoned Simon and again threatened to burn down the house. Casey called 911 at approximately 1:30 a.m. and reported that Williams had threatened to burn down the house and now "we smell something burning."[3] The fire department responded, found nothing burning and left.

At approximately 2:30 a.m., Williams returned for a third time. He drove up and tossed a Molotov cocktail at the house. It hit a window and exploded into flames.

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[3] Over the course of the night, sheriff's deputies responded to three separate 911 calls from Williams's relatives, arriving after Williams had driven away. Audio recordings of the phone calls were played for the jury.

B. Defense evidence

The defense presented alternative theories of an alibi defense and voluntary intoxication. Williams testified in his defense and denied throwing the Molotov cocktail. According to Williams, he was in Palmdale when the crimes were committed. Before that, he had been drinking consistently at the house and while visiting friends and was feeling "woozy." Following his arguments with relatives, Williams had his friend Kay Kay drive him to his friend's house in Palmdale. Williams spent the rest of the night with his friend Bob Jones ("BeBob") after paying for a taxi to take Kay Kay home. Before Kay Kay left, she used Williams's cellphone to call his girlfriend Althea Richardson. At 3:00 or 4:00 a.m., Richardson telephoned BeBob to say "somebody tried to burn the house down." Williams called Richardson, but hung up when a police officer answered the phone.

Williams testified he knew that "Shadow" was the person who had firebombed the house, because the two of them had been in a fistfight over a debt earlier in the day. Williams drove back to Lancaster and went to Shadow's house to wait for him. Williams fell asleep, and the police found him there and arrested him.

Althea Richardson testified she never heard Williams threaten to burn down the house. Rita Simon testified she did not hear Williams threaten anyone that night. After arguing with his sister Classie, Williams left the house at possibly 8:30 or 9:00 p.m. and never returned.

Dyjuan Gresham, Casey's nephew, testified Casey felt pressured by the arson investigator to implicate Williams in causing the fire. Casey had a pending criminal case and the

prosecutor had threatened to "throw him in jail" if he did not testify that Williams threw the Molotov cocktail.[4]

C. The verdicts and sentence

The jury acquitted Williams of the 11 counts of attempted murder, but found him guilty of the remaining 17 counts as charged. In a bifurcated proceeding, the trial court found true two prior strike and serious felony enhancement allegations. The prosecution elected not to proceed on the prior prison term enhancement. The court sentenced Williams to 15 consecutive terms of 25 years to life on counts 12 and 15 through 28, plus two five-year serious felony enhancements on each count totaling 150 years.

DISCUSSON

I. The Trial Court Did Not Abuse Its Discretion In Denying Williams's Motions for Substitute Counsel

The trial court denied Williams's multiple *Marsden* motions. A *Marsden* motion should be granted "if the record clearly shows that the appointed counsel is not providing adequate representation or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result. [Citation.] A trial court should grant a defendant's *Marsden* motion only when the defendant has made a substantial showing that failure to order

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[4] The trial court read to the jury a stipulation between the parties that Casey was currently being prosecuted for "grand theft auto, making a false written financial statement, and passing a check with nonsufficient funds in an amount greater than $950." The stipulation included a summary of the alleged facts underlying the pending case.

substitution [of counsel] is likely to result in constitutionally inadequate representation." (*People v. Streeter* (2012) 54 Cal.4th 205, 230, internal quotation marks omitted.)

We apply the "deferential abuse of discretion standard" when reviewing the denial of a motion to substitute counsel. (*People v. Jones* (2003) 29 Cal.4th 1229, 1245.)) "'Denial of the motion is not an abuse of discretion unless the defendant has shown that a failure to replace the appointed attorney would "substantially impair" the defendant's right to assistance of counsel.' [Citations.]" (*People v. Hart* (1999) 20 Cal.4th 546, 603.)

A. The *Marsden* hearings

For each of Williams's *Marsden* motions, the trial court conducted a lengthy in camera hearing at which it considered whether to appoint new defense counsel. Although Williams raised numerous different complaints about his counsel before the trial court, on appeal Williams focuses on one complaint he voiced during three of those hearings: that counsel's failure to obtain "potentially exculpatory" cellphone records amounted to inadequate representation, requiring substitution of counsel. We limit our consideration to that issue.

On February 21, 2017, Williams made a *Marsden* motion during trial. At the hearing on the motion, Williams claimed defense counsel had not acted on his request to obtain his cellphone records, which would show he was in Palmdale, not Lancaster, when his nephew Casey received the phone threat.[5]

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[5] Williams was referring to preliminary hearing testimony that Casey told a deputy sheriff Williams had called and threatened to burn down the house. By this time, Casey had already testified at trial either that he could not recall whether Williams threatened him or that Williams did not actually

In response, defense counsel stated he had specifically asked Williams whether he should subpoena the cellphone records. Williams told him not to get them. Counsel thus decided against obtaining the records for tactical reasons. The implication is that counsel believed the records would be inculpatory or unhelpful.

Williams denied telling his attorney not to obtain his phone records. Williams insisted that he needed them to establish he was in Palmdale, and that he had been asking for his cellphone to be "check[ed]" and for the records to be obtained since the preliminary hearing.

In denying the *Marsden* motion, the trial court found counsel's tactical decision to forego obtaining Williams's cellphone records was "understandable." The court noted that witnesses had testified at trial to having received threatening phone calls from Williams that night, which did not come from his cellphone. Williams disagreed with the court, asserting that all the calls were made on his cellphone, but someone else was using it.

The April 14, 2017 *Marsden* hearing occurred following the trial, but before the sentencing hearing. Williams again complained about defense counsel's failure to obtain the cellphone records to prove he did not threaten to burn down the house. Williams claimed his cellphone would "ping" and its records would show where the phone was located at the time. Williams also told the court that he turned off his cellphone and removed the battery when the police answered his call to Althea

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threaten him. Williams's girlfriend Althea Richardson testified she heard Williams' voice over the speaker of Casey's cellphone, but she did not hear what Williams was saying.

Richardson. In response, counsel observed that if a cellphone were turned off and the battery were removed, there would be no way to ascertain the phone's location.

The trial court reviewed the court file and reminded Williams that he had been given an opportunity to waive time to "wait for phone records." Williams denied that defense counsel had given him the option of waiving time for the phone records. Williams believed he had to waive time because his attorney was engaged in another trial.[6] (An issue in two prior *Marsden* hearings was whether counsel had acted on Williams's request to obtain his nephew Casey's cellphone records. Counsel told the court that he had not received the necessary information to request Casey's records until three days before trial, it would take weeks for the cellphone provider to comply, and Williams had insisted on not waiving time.)

In denying the *Marsden* motion, the trial court recalled Williams had been "quite adamant" about not waiving time. The court concluded, "[t]here may have been things that Mr. Williams was requesting that may have not been put on either due to the rules of evidence or tactical decisions by counsel with information that counsel had."

On June 23, 2017, Williams made a *Marsden* motion at the outset of his sentencing hearing. Williams again complained about defense counsel's failure to obtain his cellphone records. Defense counsel believed the phone records would not have helped the defense, because Williams had "negated any reason

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[6] On February 1, 2, and 6, 2017, the trial court continued Williams's trial over his objection because his attorney was engaged in another trial.

for getting the phone records when he said his phone was shut off at the time and he had given it to someone else at the time."

The trial court denied the *Marsden* motion, finding any conflicts between Williams and defense counsel did not render counsel's representation improper. The court found that counsel's decisions were appropriate for tactical reasons or that there were no grounds to pursue the records. The court again acknowledged that, with respect to obtaining the cellphone records, Williams was "very adamant" that he would not waive time.

B. Defense counsel's failure to obtain cellphone records did not amount to ineffective assistance

Williams argues his cellphone records could have exonerated him of the aggravated assault and arson charges by establishing he was in Palmdale rather than in Lancaster at the time of the offenses. However, in view of Williams claims that he had given his cellphone to someone else to use and had shut it off at the relevant times, Williams's theory did not bear serious scrutiny as supporting an alibi defense. The trial court properly deferred to defense counsel's tactical reasons for not pursuing the records and for focusing instead on more plausible evidence of an alibi defense. Counsel told the trial court that his investigator had interviewed many witnesses and for weeks had attempted to locate Bob Jones (BeBob) as a witness.[7] Accordingly, Williams

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[7] During a police interview on June 6, 2016, Bob Jones corroborated Williams's testimony of being in Palmdale the night of June 3 or June 4, 2016, but he disappeared before trial. Efforts by the prosecution and the defense to locate him were unsuccessful.

has not shown the trial court abused its discretion in denying his *Marsden* motions.

At most, Williams's claim revealed tactical disagreements and a level of distrust flowing from Williams to his attorney. Where complaints of counsel's ineffective assistance involve tactical disagreements, we do not find *Marsden* error. (*People v. Dickey* (2005) 35 Cal.4th 884, 922.) To the extent there was a credibility question about whether Williams told his attorney not to obtain his phone records or not to permit time waivers, the trial court was entitled to credit counsel's representations over Williams's. (*People v. Smith* (1993) 6 Cal.4th 684, 696.) Additionally, defense counsel stated and the trial court found that Williams made it difficult to obtain the cellphone records because he refused to waive time.

Williams was a particularly difficult client. He was erratic and uncooperative. He interfered with counsel's ability to represent him, fixated on non-meritorious issues and disrupted court proceedings. And, while there is little doubt his attorney's patience with Williams was stretched, the trial court reasonably concluded his performance throughout the proceedings was constitutionally adequate and substitution of counsel unwarranted.

II. Substantial Evidence Supports Williams's Convictions for Making a Criminal Threat

Williams was convicted on four counts of making a criminal threat. In three of the four counts, the named victims were his former sister-in-law Edith Collins, his nephew Casey Cameros

and his girlfriend Althea Richardson.[8] Williams contends substantial evidence fails to support his convictions on these three counts. His claims are unavailing.

To prove a defendant made a criminal threat, the prosecution must establish (1) the defendant willfully threatened to commit a crime that would result in death or great bodily injury; (2) the defendant made the threat with the specific intent it be taken as a threat; (3) the threat, on its face and under the circumstances in which it was made, was sufficiently unequivocal, unconditional, immediate and specific to convey to the victim threatened a gravity of purpose and an immediate prospect of execution of the threat; (4) the threat caused the victim to be in sustained fear for his or her own safety or for his or her immediate family's safety; and (5) the victim's fear was reasonable. (§ 422, subd. (a);[9] *In re George T.* (2004) 33 Cal.4th 620, 630; *People v. Toledo* (2001) 26 Cal.4th 221, 227-228.)

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[8] The named victim in the fourth count was his sister Classie Cameros.

[9] Section 422, subdivision (a) provides: "Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be

Williams argues the evidence is insufficient that he directly threatened Collins or Casey with great bodily injury or death, or that he intended for his statement to be understood by them as a threat. With respect to Richardson, Williams maintains there was no evidence his statement caused her to be in sustained fear. Williams bears a heavy burden in demonstrating the evidence does not support the jury's verdicts. (See *In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1136.) We have reviewed the entire record, considering the evidence in the light most favorable to the judgment, and we conclude a rational trier of fact could have found these elements of the challenged convictions beyond a reasonable doubt. (See, *People v. Zamudio* (2008) 43 Cal.4th 327, 357; accord *People v. Manibusan* (2013) 58 Cal.4th 40, 87.)

A. There was sufficient evidence that Williams intended his statement as a threat against Collins and Casey

Edith Collins testified she heard Williams yell at Althea Richardson and Rita Simon to leave the house or he was going to blow it up. Collins later heard Williams issue similar threats to the women in separate telephone calls.[10] Collins also testified she heard Williams once in person, and once over the phone, threaten to burn down the house, which frightened her. She stayed in the living room with other relatives and could not sleep. Casey testified he could not remember Williams threatening to burn

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punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison."

[10] Apparently, the telephone conversations Collins heard between Williams and these women were transmitted through the women's cellphone speakers.

down the house while demanding to be let inside. He also testified Williams never said the threat to him. Casey later heard Rita Simon receive a telephone call and then scream that Williams was going to burn down the house.[11] Fearing Williams would carry out his threat, Casey lay down on the living room floor, next to the locked security door, but he could not sleep.

Williams contends that although Collins and Casey became aware of the threat to burn down the house, there is no evidence he directly threatened them or intended for them to understand his statement as a threat. We examine Williams's statement "on its face and under the circumstances in which it [was] made" to determine whether there was substantial evidence that it was a criminal threat against Collins and Casey. (§ 422, subd. (a); *People v. Solis* (2001) 90 Cal.App.4th 1002, 1013 ["[A]ll of the surrounding circumstances should be taken into account to determine if a threat falls within the proscription of section 422."].)

On its face, Williams's statement that he was going to burn down the house was a threat of violence. In making the statement, Williams was threatening to unlawfully kill or unlawfully cause great bodily injury. The nature of the threat and the circumstances under which it was made show Williams directed the threat against Collins and Casey, and he intended for them to understand it as a threat. Williams had been in a protracted dispute with his relatives at the house. He was furious because they had locked him out and then steadfastly refused let him in. Williams was yelling and beating on the

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[11] Over defense objections, the trial court admitted what Casey heard Rita Simon scream as an excited or spontaneous utterance exception to the hearsay rule. (Evid. Code, § 1240.)

security door while his six adult relatives, including Collins and Casey, were in the living room, just inside the security door. Williams shouted his threat to burn down the house through the security door. The threat was explicit, and it was directed against everyone in the living room. Because Williams's threat was to burn down the house, the intended victims were all the relatives inside the house at the time, including Collins and Casey. Although Williams made the threat while arguing with Classie, there was no evidence he intended to exclude Collins and Casey from harm. Indeed, they were both logically intended victims of the threat, because Williams's ejection from the house stemmed from his earlier altercations with them.

Finally, while section 422 does not require an intent to carry out the threat, if a defendant attempts to make good on his threat, post-threat conduct can be used as evidence of the meaning of the defendant's threat and the specific intent of the threat. (*People v. Martinez* (1997) 53 Cal.App.4th 1212, 1221 [The fact the defendant set fire to the victim's place of employment, a day after the defendant threatened the victim on the job, can be considered in determining whether the defendant violated section 422].) Here, any question concerning the meaning and intent of Williams's threat with respect to Collins and Casey was resolved by his act of arson.

Williams argues Collins merely heard Williams directly threaten Althea Richardson and Rita Simon, and Casey only learned about the threats second-hand when Simon reacted to Williams's phone call. Whether Williams's intended victims actually heard the threat he directed to them is a different issue from whether he intended to threaten them. Collins testified she heard Williams threaten to burn down the house. Casey testified

he did not remember Williams threatening to burn down the house while demanding to be allowed inside. The last thing Casey heard Williams say was, "If I don't sleep, you're not going to sleep." However, Casey later heard Rita Simon scream that Williams had threatened to burn down the house in a phone call. That Casey failed to hear or to recall hearing the threat when Williams originally conveyed it, has no bearing on whether Williams intended to direct his threat against Casey at the time. Certainly, Casey understood that the threat was directed against him and took it seriously. Substantial evidence supported Williams's convictions for making a criminal threat against Collins and Casey.

B. There was sufficient evidence that Althea Richardson suffered sustained fear

Edith Collins testified Williams urged Althea Richardson to leave or he would burn down the house. Williams contends there was insufficient evidence that Williams' threat placed Richardson in sustained fear. He is mistaken.

Making a criminal threat requires proof of the element of sustained fear. (§ 422; *People v. Toledo*, *supra,* 26 Cal.4th 221, 228.) The element has both an objective and subjective component. As pertinent here, Richardson's fear from Williams's threat must have been reasonable, and it must have been real. (*In re Ricky T., supra,* 87 Cal.App.4th 1132, 1140.) We do not doubt, and Williams does not dispute, the objective component was met. An average reasonable person would be frightened if told his or her house would be burned down. Williams notes, however, that Richardson never testified the statement put her in actual fear—the subjective component. Instead, Richardson testified that Williams urged her to leave the house, but he did

not state a reason. Williams also points to Richardson's testimony that she fell asleep with her children, while other residents of the house testified they could not sleep, fearing that Williams would carry out his threat.

Williams's argument fails to account for conflicting evidence supporting a reasonable inference that Richardson was in actual fear from the threat and her fear was sustained, that is lasting for "'a period of time that extends beyond what is momentary, fleeting, or transitory.'" (*People v Fierro* (2010) 180 Cal.App.4th 1342, 1349.) Los Angeles County Sheriff's Deputy Kenneth Towles testified he interviewed Richardson after the arson had occurred. She related that Williams had threatened to burn down the house if she did not leave with him. According to Towles, Richardson appeared "very frightened, as if she had been through a traumatic experience." Towles offered her an emergency protective order against Williams and she accepted it. Substantial evidence supported Williams's conviction for making a criminal threat against Richardson.

III. The Trial Court Was Not Obligated To Give a Unanimity Instruction Sua Sponte

"When an accusatory pleading charges the defendant with a single criminal act, and the evidence presented at trial tends to show more than one such unlawful act, either the prosecution must elect the specific act relied upon to prove the charge to the jury, or the court must instruct the jury that it must unanimously agree that the defendant committed the same specific criminal act. [Citation.] The duty to instruct on unanimity when no election has been made rests upon the court sua sponte. [Citation.] … [T]he principle has emerged that if the

prosecution shows several acts, each of which could constitute a separate offense, a unanimity instruction is required." (*People v. Melhado* (1998) 60 Cal.App.4th 1529, 1534.)

Williams contends the trial court was obligated to give CALCRIM No. 3500, the unanimity instruction, sua sponte with respect to the four counts of making a criminal threat.[12] He argues the instruction was necessary because he made multiple statements to the alleged victims and the jury was not informed which statement the prosecution was relying upon for each count of making a criminal threat. Williams maintains that, for example, there was evidence he told Althea Richardson in person and over the phone that he would burn down the house unless she left; he said to Classie, "If I can't stay here tonight, won't nobody else will. I'll burn this mother fucker down;" he said to Casey, "If I don't sleep tonight, neither is y'all;" and he threatened to fight Cassie or have Kay Kay beat up Cassie.

Here, a unanimity instruction was not required for the counts of making a criminal threat. The record shows the prosecutor clearly informed the jury during closing argument which threat she was relying upon to prove each count: The prosecutor argued: Classie "heard the defendant, her brother, threaten to burn the house down. She testified that she was in the living room at the time she heard this threat. [¶] She also testified that there were other people in that living room. Casey,

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12 CALCRIM No. 3500 provides: "The People have presented evidence of more than one act to prove that the defendant committed this offense. You must not find the defendant guilty unless you all agree that the People have proved that the defendant committed at least one of these acts and you all agree on which act (he/she) committed."

Cassie, Althea, Edith and Rita;" The prosecutor also argued Edith Collins "heard the defendant threaten to burn the house down;" And the prosecutor told the jury, when Althea Richardson was interviewed by sheriff's deputies, she said that Williams told her on "June the 4th that she would see what happens if she did not leave the home. The defendant told her that he would burn the house down if she did not leave the home." The prosecutor acknowledged that Casey either did not remember or did not hear Williams's threat to burn down the house, although Classie, who was with Casey in the living room, heard the threat. The prosecutor then argued, "Casey Cameros testified that he heard his Aunt Rita screaming that the defendant was going to burn the house down."

The prosecution can make an election by "tying each specific count to specific criminal acts elicited from the victim's testimony"—typically in opening statement and/or closing argument. (*People v. Diaz* (1987) 195 Cal.App.3d 1375, 1382; e.g. *People v. Jantz* (2006) 137 Cal.App.4th 1283, 1292; *People v. Mayer* (2003) 108 Cal.App.4th 403, 418-419; *People v. Hawkins* (2002) 98 Cal.App.4th 1428, 1454; cf. *People v. Melhado, supra,* 60 Cal.App.4th 1529, 1535-1536 [prosecutor's closing argument did not constitute an election; while it did place more emphasis on one event than others, it did not adequately inform jurors that prosecution had elected to seek conviction based solely on that event].) In this case, because the prosecutor designated for the jury which threat was the basis for each count of making a criminal threat, her election obviated the need for a unanimity instruction. (*People v. Mahoney* (2013) 220 Cal.App.4th 781, 796.)

IV. Limited remand is appropriate for the trial court to consider whether to strike the prior serious felony enhancements.

Williams's sentence included two five-year prior serious felony enhancements under section 667, subdivision (a)(1) on each of the 17 counts on which he was convicted, although the sentence on counts 13 (arson of an inhabited property) and 14 (use of a destructive or explosive device) was imposed and stayed under section 654. At the time Williams was sentenced, the statute required the trial court to enhance the sentence imposed for conviction of a serious felony by five years for each qualifying prior serious felony conviction. On September 30, 2018, the Governor signed Senate Bill No. 1393, which, effective January 1, 2019, amends sections 667 and 1385 to allow the trial court to exercise discretion to strike or dismiss section 667, subdivision (a), serious felony enhancements. (See Stats.2018, ch. 1013, §§ 1 & 2.)

The parties agree, as do we, that amended sections 667, subdivision (a) and 1385 apply to Williams, whose sentence was not final before the effective date of the amended statutes. (*People v Garcia* (2018) 28 Cal.App.5th 961, 973; *In re Estrada* (1965) 63 Cal.2d 740, 745.) The parties also agree that remand is appropriate, because there is no clear indication in the record that the trial court would have refrained from striking the enhancements had it had the discretion to do so. (See, *People v. Billingsley* (2018) 22 Cal.App.5th 1076, 1081 [""[d]efendants are entitled to sentencing decisions made in the exercise of the 'informed discretion' of the sentencing court""]; *People v. McDaniels* (2018) 22 Cal.App.5th 420, 427-428 ["no clear indication of an intent by the trial court not to strike one or more

of the firearm enhancements" as to which new discretion to strike had been enacted].)

DISPOSITION

Williams's convictions are affirmed, and the matter remanded for the trial court to consider whether to strike the prior serious felony enhancements under section 667, subdivision (a). [13]

CURREY, J.

We concur:

MANELLA, P.J.

COLLINS, J.

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[13] The abstract of judgment mistakenly shows the section 667, subdivision (a)(1) enhancements on count 17 were stayed.